

## **Community courts to address youth offending: A lost opportunity?**

### **Abstract**

This article presents an account of the work of community courts in the USA (in Red Hook, Brooklyn) and the UK, specifically to examine the ways in which youth offending is, or can be, addressed. It is pertinent to explore the work of these courts, in light of cuts to youth services and concerns about the use of prison for young people in the UK. Community courts, like many community justice initiatives offer an alternative way to address low level but more prevalent offending which affects citizens' quality of life (Wolf, 2006). They adopt a problem solving approach, in dialogue with the defendant and offer the support and means by which to address their needs and enable desistance (Karp & Clear, 2000). This article suggests that young people at risk of offending and young offenders in particular could benefit from this approach as it offers a form of intervention, diversion from the YJS and problem solving approaches, more in line with the ethos of youth work (Wood & Hine, 2013). It examines the work of Community Justice Centres (CJs) and community courts in the framework of desistance and social capital theories, to understand how they can offer a viable alternative to current provisions.

### **Introduction**

The focus on youth offending and youth justice policy is timely due to the significant impact spending cuts have had on youth services, stubbornly high re-offending rates (up to 68%) for those leaving youth custody (NACRO, 2011; Ministry of Justice, 2013) and the continued demonization of youth, especially as offenders, in the media. Official statistics tell us the number of young people entering the Youth Justice System (YJS) has declined, as has the number in custody (Ministry of Justice, 2013). However, concerns remain about the complex needs of young offenders, especially those in custody, as 33% of them have been in care, 17% report special educational needs (the national figure is 3%), 69% link their re-offending to substance misuse and 63% reported needing help with accommodation (Youth Justice Board, 2015). In addition, there are increases in incidences of self-harm in Youth Offender Institutions (YOIs), attributed to the conditions and regime, where young people can find themselves locked up for 23 hours a day (Bateman, 2015). Despite these concerns, the YJS seems to persist in policies to control and punish (Muncie & Hughes, 2002; Muncie, 2006), with a focus on formal responses, such as youth offending teams (YOTs), numerous sanctions in the community and custodial sentences. Whilst youth courts do operate in a less formal way than Magistrates' and Crown courts, their function is one of administering justice through punishment and messages of deterrence, with some acknowledgement to risk factors through YOT assessments (Youth Justice Board, 2013).

Community justice centres (CJs) in the USA and community courts in the UK aim to deal with low level offending and anti-social behaviour, improve citizens' quality of life and offer alternatives to adversarial court processes, using a problem solving approach. This can identify the contributory factors or causes of offending, which can then be addressed through the courts signposting services (Mair & Millings, 2011) or in the case of CJs, providing services co-located within the court (Karp & Clear, 2000; Wolf, 2006). CJs and community courts offer a way for offenders to access resources and networks which previously they have been unaware of or excluded from, such as education and treatment for mental health and/or substance misuse issues. In the USA, CJs offer this to young people, as part of the community they serve and are geographically located in (Wolf, 2006), whereas community courts in the UK, as part of the Magistrates' court system, follow the principles of problem solving by signposting offenders to services to meet their needs (Llewelyn-Thomas & Prior, 2007; Mair & Millings, 2011). The ethos of youth work is to value informal practice and voluntary

participation (Jeffs & Smith, 2005), working within the framework of legal processes for young offenders (Wood & Hine, 2013). This fits with the approach of CJs and community courts, to acknowledge the legal requirements of the courts, using the courtroom as a place for this and also to identify needs and present solutions. CJs in the USA use peer group youth courts, to deal with misdemeanours by young people (Anderson, 1999), and both community courts in the USA and UK adopt less formal approaches to listen to the offender (defendants must enter a guilty plea to have access to the services of the community court) and try to understand how the local community can support them (Llewelyn-Thomas & Prior, 2007).

This article will consider how CJs in the USA and community courts in the UK can address youth crime and deviance, in the framework of social capital and desistance theory to explore the individual and social factors which put young people at risk of offending or re-offending (Home Office, 2006). Social capital theory assesses the resources and networks accessible by citizens to solve problems and reach their potential (Bourdieu, 1986; Coleman, 1990; ONS, 2001; Leonard & Onyx, 2007) and desistance theory has developed understanding about the various mechanisms ex-offenders adopt to cease offending. This includes changing self-identity (Laub & Sampson, 2003), maturation and the development of social bonds (Maruna, 2001) and establishing offenders' 'locus of control' (Farrall & Calverley, 2006), i.e. whether capacity to change is part of their identity, or something they attribute to those around them. CJs and community courts work in partnership with a range of agencies, and in the case of CJs are physically located in the community they serve, so it is important to understand how well the community can support its more vulnerable citizens and those with complex needs. Desistance theory describes the personal and social contexts of ex-offenders attempting to change (King, 2012), along with the need to develop social bonds, so the local community and state agencies become an important part of these processes. Community courts need to signpost and refer offenders to services, such as healthcare, housing assistance, out of school activities for young people and charities, which are all forms of social capital 'resources'. It is also important to understand how well citizens are aware of these, able to access them and even participate in their provision. The networks required for this are identified by social capital theory, and Putnam (2000) describes this well as two different forms of social capital, bridging and bonding. He suggests that 'bonding social capital constitutes a kind of sociological super glue, whereas bridging social capital provides a sociological WD40' (2009:19). Bridging social capital is necessary for galvanising citizens into action, whereas bonding social capital is necessary in order to facilitate the coexistence of citizens in a community. These can be tested by the impact of crime and disorder, and there are concerns that forms of bonding social capital can exclude those who do not fit established norms (Garland, 1990). In light of this, it becomes clear what can hinder the work of CJs and community courts, if the provisions needed to meet the complex needs of young offenders are not in place, and networks are affected by citizens' negative perceptions of young offenders. Mair and Millings (2011) emphasise the 'community engagement' role of the CJC in North Liverpool, which has now closed down, and this was clearly important to inform citizens of the work of the community court and how it could help them to consider new ways of 'doing justice.' Therefore, this article will explore the potential for community courts in the UK to better assess the needs of young people as offenders or at risk of offending, within the legal requirements of the YJS and working in line with the ethos of other youth services.

### **Community justice centres and community courts**

CJs emerged in the USA in the early 1990s, the first being the Midtown Community Court in Manhattan and followed closely by Red Hook, in Brooklyn. The Red Hook CJC provided court services and a range of support services for all local residents, such as activities for young people, drug and

alcohol treatment and access to education and training (Llewellyn-Thomas & Prior, 2007). The broader aims of the court are to improve the quality of life for residents, offering a 'dual commitment to changing the lives of individual offenders and the quality of life in communities' (Lee et al., 2013:3) by dealing with misdemeanours and offering alternatives to custody and fines. Offenders were also strictly monitored to ensure compliance with their sentence, which could include treatment for health issues such as addiction, social services, housing and access to work placements (ibid). A review of the achievements of the Red Hook CJC demonstrated it had also transformed the local community, into a place where residents felt safe and expressed greater confidence in the justice system, meaning that 10 years after its' introduction, the CJC is a 'prominent fixture in the Red Hook neighborhood' and 'arguably the best known community court in the world' (Lee et al., 2013:3). Another feature of the Red Hook CJC was the use of young people in the court to deal with youth offending, using peer 'pressure' in a more positive way and also peer mentoring to ensure support was offered before deviant or low level criminal behaviour escalated. The youth court ran in conjunction with education provision, again as a means to offer additional support to young people who were struggling at school and in some cases, excluded (ibid).

In 2005, the Red Hook CJC model was piloted in North Liverpool, following the Red Hook model, the court was located in the community it served and incorporated a range of support services and facilities for local residents. An evaluation of this model in North Liverpool demonstrated residents were generally positive about the initiative, particularly with having access to services local to them (Llewellyn-Thomas & Prior, 2007). In November 2006, the Government announced plans to launch 10 new Community Courts, across England and Wales, making use of existing magistrates' court buildings and resources, rather than providing a purpose built centre. The North Liverpool CJC (NLCJC) and other community courts had young offenders as part of their caseload, but they did not make use of peers to run a distinct youth court. Mair and Milling's (2011) study into the NLCJC describes this approach as combining 'a unique court process with wider community resource provision' (p.3), designed to improve the relationship between other CJS professionals and the community, taking a problem solving approach, with clear leadership, co-location with other agencies and providing a resource and focal point for the community. It was viewed as an innovative approach, especially in relation to trying to solve the problems presented by offenders, whilst also offering services to others in the community affected by crime and disorder. Mair and Milling's (2011) study focused on the aim of 'community engagement' as part of the work of NLCJC, describing it as an ongoing process, which previous studies have found difficult to quantify and demonstrate (Mckenna, 2007; Llewellyn-Thomas & Prior, 2007) primarily because they conducted research too soon after the introduction of the court (ibid).

CJCs have adopted the principles of restorative justice, to support victims and repair harms, but also to confront offenders with the consequences of their behaviour, as part of the problem solving approach (Marshall, 1999; Johnstone, 2013). Bowen and Whitehead (2013) suggest that more innovative, fairer, faster and 'people focused' courts can cut crime and make the court system more efficient. Courts are still perceived as resistant to change, however, there are examples of innovation such as diverting low level disorder offences to restorative programmes, providing advice to those with addiction and/or mental health issues and implementing better monitoring of offenders (Walsh, 2003; Burton, 2006). According to Bowen and Whitehead (2013), four key principles underpin these innovations – fairness, focus on victims and offenders as people needing help, authority in sentencing decisions and acting swiftly in response to breaches. There are however barriers to this, alongside resistance among some judiciary to adopt changes, it remains challenging for judges and court managers to innovate due to legal and resource constraints. Bowen and Whitehead (2013) cite a number of recommendations to achieve innovation in courts, giving more

authority at a local level, embracing other forms of justice for low level offending, training to improve communication between courts and services in the community which can help offenders and extending supervision, as found in CJs and community courts.

### **Desistance and social capital and youth justice policy**

Desistance theorists emphasise the need to take into consideration a range of individual and structural factors which can lead to cessation of offending, for example Laub and Simpson (2003) refer to 'institutional turning points' such as employment, having a family or joining the military. On an individual basis, there is a need for a change of self-identity and putting criminal-self firmly in the past. Maruna (2001) emphasises the need for ex-offenders to develop social bonds, and go through the processes of maturation and realisation of the impact of their behaviour. This requires belief that change can occur, which can depend on their 'locus of control', whether they believe they have the capacity to change, or that external factors have to change first (Farrall and Calverley, 2006). Farrall (2002) suggests also the need for human and social capital, i.e. resources on an individual level, and living in a community which offers opportunities for sustainable change. King (2012) suggests the central challenge is to develop both personal and social contexts so that ex-offenders can make use of support offered and opportunities that arise. The Social Exclusion Unit (2002) demonstrated the impact of sustained disadvantage experienced by all ages of offenders as a risk factor for re-offending, emphasising the complexity in finding ways to help them desist from offending, i.e. identifying the interplay between changing external social conditions and individual capacity to change.

Leonard and Onyx (2007) describe social capital as:

'A durable network of more or less institutionalized relationships of mutual acquaintance and recognition – or in other words, to membership of a group – which provides each of its members with the backing of the collectively-owned capital, a 'credential' which entitles them to credit, in the various senses of the word.' (2007:51)

The application of social capital theory in social policy encompasses healthcare, economics, education and also criminal justice, looking at community based approaches making use of resources in the community to prevent crime and reduce re-offending (Halpern, 1999; Campbell et al., 1999; Putnam, 2000; Ferguson & Mindel, 2007). Bonding and bridging forms of social capital (Putnam, 2000) emphasise that the existence of community based resources is not enough, ex-offenders and others need to be aware of those resources and be able to access them, and services need to have the capacity to help all those in need. Boeck and Flemming (2005) have explored social capital in relation to social policy for young people, in the context of viewing it as a community resource, offering engagement, reciprocity, trust, agreed norms and cohesion. They argue that social capital offers a 'work in progress' (p262), a means by which policy and practice can consider the presence and quality of networks in a community which can offer prospects for improvement, particularly those which exist between the state, citizens and the voluntary sector (Jeffs & Smith, 2005). Legal processes may challenge this ethos, through court orders which demand compliance or curfews which restrict movement, but it is possible to work with young offenders within this framework and trying to maintain the principles which have guided youth workers. This includes a focus on acknowledging the role of active citizenship, social capital and different approaches to the administration of justice (Wood & Hine, 2013). The problem solving approach and focus on improving quality of life for the local community found in CJs and community courts embraces aspects of social capital, to build networks and resources for citizens (Karp & Clear, 2000; Ferguson & Mindel, 2007) and promotes community engagement, through working with voluntary groups and

residents to create conditions in which desistance can occur (Mair & Millings, 2011; King, 2012). Operating with the legal framework of the court system legitimises CJs and community courts, which while they remain a key part of the CJS or YJS, are presenting viable alternatives and more efficient ways of working (Bowen & Whitehead, 2013).

Although there is a decrease in the number of young people going to court and in custody (NACRO, 2011) re-offending rates remain high at 68% (Ministry of Justice, 2013), and young offenders in particular face continued scrutiny and labelling as a 'social problem', with their offending arguably attracting disproportionate attention and negative perceptions not always based on direct experiences (Hough & Roberts, 2004; France, 2008). Young people also seem to be disregarded as victims, even of serious crimes, such as shown in the recent events in Rotherham and Oxford (Jay, 2014). Brown suggests:

'Except in conjunction with the ideology of childhood 'innocence' – itself increasingly shaken by the demonization of ever younger age groups – the predominant categorizations of youth do not sit easily within a 'victim' discourse...in popular and policy discourse such issues are often treated with cynicism, disdain or vehement denial.' (1998:116-7)

It is suggested that young people as victims face different perceptions to other groups and the focus on them as offenders has justified a shift in criminal justice and social policy to control, coerce and punish, rather than focus on welfare and support (Muncie & Hughes, 2002; Muncie, 2006). The risk factors associated with young offending, according to the Home Office (2006) occur around four domains, family, school, community and the individual. This study identified more specific risk factors of criminal behaviour in the family, poverty, impulsive behaviour, poor parenting and low school attendance and lower educational achievements. An earlier study (Lyon et al., 2000), developed some key recommendations for policy, based on messages from young people in custody, including to avoid blaming parents, to improve the conditions in communities where crime was normalised, to be tougher on school truancy and to make better use of peer pressure and mentoring. CJs in the USA have embraced peer group approaches for young offenders, to focus on 'misdemeanours' such as truancy, to offer early intervention in an environment where young people understand their welfare is as much a focus as their behaviour (Lee et al., 2013).

Policy to address youth offending, such as sanctions in the form of curfews up to custodial sentences, are implemented alongside multi-agency responses in the form of Youth Offending Teams (YOTs) and restorative justice policies. This presents a range of policies which aim to control, manage risk, address multiple problems and divert young people from the CJS (Holdaway et al., 2001; Crawford & Newburn, 2003). YOTS are a significant aspect of youth justice, introduced in the Crime and Disorder Act (1998), to require a more formal mechanism to bring agencies together to address young offenders' needs (Crawford & Newburn, 2003). CJs and community courts combine the formal requirements of courts with less formal approaches found in restorative justice, enhanced by partnerships with agencies for the courts to refer offenders, whether as part of their local community or co-located with the court. The problem solving ethos is important, but must be done in line with the legal requirements of courts, such as monitoring and follow up appearances to ensure compliance (Mair & Millings, 2011; Lee et al., 2013).

Youth courts distinguish themselves from adult magistrates' courts through having less formal practices, using first names for example, to deal with cases for defendants aged 10-17, for offences such as theft and burglary, anti-social behaviour and drug offences, with more serious cases going to the Crown Court (Ministry of Justice, 2013). This presents an obvious limitation of CJs and community courts, in that they cannot deal with more serious crime, however, in comparing them to

youth courts, their focus on problem solving, having a dialogue with the offender and using peer pressure offers mechanisms which look beyond legal processes and the administration of justice, with genuine attempts to address the causes of offending and therefore prevent re-offending, and potential escalation into more serious crime.

The recent cuts to services for young people who accessed out of school hours services to connect with peers in a safe environment and to form social bonds within their community beyond family and school raises particular concerns, specifically on the impact on young ex-offenders' community and its capacity to support them in making changes (UNISON, 2014). In recent years, policy and practice to address youth offending and deviance has been characterised by the inclusion of multiple agencies and sectors providing programmes designed to offer structure and opportunity for leisure and learning (Wood & Hine, 2013). The Coalition Government's policy, 'Positive for Youth policy', focused on giving young people a 'sense of belonging...supportive relationships, strong ambitions and good opportunities they need to realise their potential' (Wood & Hine, 2013:4). These are enticing aims, yet alongside this are more coercive and controlling measures for young offenders, who have fewer rights in public life and face increasing instability and uncertainty, not experienced by previous generations (Furlong & Cartmel, 2007). CJs and community courts cannot replace youth services, but they do offer a form of early intervention and support to divert young people at risk of offending from the YJS and more formal sanctions, and in the case of CJs in the USA, drop in services for young people who need support with their education, health and a means by which to 'bond' with their local community.

Risk based approaches in youth justice policy, seek to assess and manage risks of offending, such as social exclusion, low school attendance, negative peer influences and deviant behaviour, which has 'widened the net' of youth justice to include those young people who haven't yet committed a crime (Yates, 2009). Targeted approaches are favoured in place of welfarist approaches, an example of this being the 'Troubled Families' programme, which sought to provide intensive support and monitoring for 120,000 families facing multiple issues of long term unemployment, truancy among children, contact with the CJS and mental health issues. Recent figures promoted this as a success in saving tax payers £1.2billion through helping 105,671 families, as claimed by Eric Pickles, Secretary of State for Communities and Local Government (Wintour, 2015). However, there have been criticisms of this, in that the figures claimed to be saved are inaccurate and the unsustainability of such an approach, especially in an age of austerity which is arguably contributing to some of the issues the families face (ibid). This emphasises the need for earlier interventions to address low level offending and in the case of young people, deviancy such as truancy or anti-social behaviour. CJs in the USA offer an important focal point and form a prominent part of the community, where any member of community, be they offenders or residents can drop in to access support services and address problems. Whilst community courts are not physically located in the community they serve, they still offer or signpost services aiming to solve problems, provide early intervention and diversion from the CJS and also deal with 'misdemeanours' or low level crime and deviance. Such a resource could mean young people and their families have access to support and resources which prevent them from requiring such intensive intervention as the Troubled Families programme, given the concerns about its effectiveness and sustainability.

## **Conclusion**

Although CJs in the UK have 'come and gone' (the NLCJC was closed down in 2013), the community court 'approach' remains in place within magistrates' courts and could offer ways to meet the needs of young offenders. In the context of the high re-offending rates, concerns about the use of custody for young people and cuts to services, community courts offer a mechanism to intervene and divert

young people from the YJS, using an approach which aims to solve problems and address the risks of re-offending. These principles are aligned to youth work and restorative justice, as alternatives to adversarial models, which support offenders, recompense victims and restore harm to the community (Marshall, 1999; Johnstone, 2013). The domains of risk identified by the Home Office (2006) emphasise the role of community and its conditions which can help or hinder young peoples' prospects, along with their school, family and their own capacity for change. Community is a difficult term to define and apply in policy (Hughes, 2007; Shapland, 2008), but within the framework of social capital, it is possible to observe the conditions which promote safety and acceptance of ex-offenders, along with assessing the resources and networks in place in which ex-offenders can take up opportunities to help them desist from crime.

Desistance theorists state that ceasing crime is a complex process, an interplay between individual's capacity to change and having access to resources and networks to enable this. If rehabilitation programmes focus only on changing offenders 'locus of control' (Farrall and Caverley, 2006), a lack of opportunities and amenities in a community may impede the drive to change. Additionally, not dealing with the offenders' negative 'self-identity' (Laub & Sampson, 2003) can mean they don't embrace opportunities or struggle to comply with such opportunities which form a condition of their sentence. Young ex-offenders need to form bonds, a sense of something to lose if they re-offend (Maruna, 2001), but knowing which area of their lives to focus on can be difficult without consultation with them and providing a proper forum to allow for this discussion. The approach of enabling a dialogue with the offender in CJs and community courts means professionals can better identify their needs, rather than imposing categories from existing risk assessment tools or sentencing guidelines. Offenders may feel more in control of their case outcome and therefore may be more inclined to take advantage of opportunities (King, 2012).

YOTs offer a targeted, multi-agency response and involve CJS and other agencies to support young offenders as well as monitoring their compliance to their sentence (Crawford & Newburn, 2003; Pycroft & Gough, 2010). Whilst YOTs are well placed to deal with high risk offenders, CJs and community courts have a role in dealing with low level crime, crucially to divert young people from the YJS. The intensive supervision and interventions of YOTs are not appropriate for those young offenders engaged in lower level crime and deviance, whereas CJs and community courts offer a forum where such behaviour can be addressed. CJs in particular aim to serve the community in which they are located, becoming a social capital resource for all community members to use, as they offer help and support to those not engaged in the CJS as well as those who are (Karp & Clear, 2000). Bowen and Whitehead (2013) cite a need for change in judiciary process, based on their research into the effectiveness of more traditional court systems, with their findings emphasising the need for fairness, support for victims and offenders, efficiency and maintaining the authority of the sentencing process.

CJs and community courts can provide both formal and informal means by which to address offending, which can be important for those outside of this process, in order to see 'justice being done.' For young offenders, especially those who have not committed a crime, but have engaged in deviant behaviour, restorative approaches are appropriate, but if there is a need for them to face the courts, then CJs and community courts can provide a forum in which this can be done, using positive peer pressure and mentoring as well as taking a problem solving approach to their case, in line with youth work policies which aim to bring about a sense of belonging, support and opportunities for change (Wood & Hine, 2013). CJs and community courts which deal with young offending and attempt to address problems in dialogue with the offender can work well alongside youth services and other agencies to enhance the potential for change and reduce the risk of re-

offending. CJs and community courts working with probation services can order participation in programmes to address behaviour and change the 'criminal self' (e.g. Laub & Sampson, 2003), but can also provide a form of social capital in the local community where ex-offenders can be given the opportunity and means by which to ensure a change in prospects and desistance from offending.

Community courts in the UK are still being used, in that the principles of this approach are embedded in the existing magistrates' court system, but this has required a change of approach for judiciary and if this change is not maintained and passed to others, this could jeopardise existing courts. The use of outreach services as part of the CJC model can better inform the public, and form an important part of the work of CJs and community courts to engage local residents and create a community where ex-offenders are accepted and supported (Mair & Millings, 2011). Agencies and organisations use social networking sites, for example Neighbourhood Policing Teams, charities and organisations such as UNITE (who offer mediation and restorative justice) to promote their work, as a means of consulting with the local community and to report on incidents which have affected the community.

Perhaps if the community court model had greater prominence in the court system and CJS, its role in addressing youth crime could be recognised as meeting the specific features of this and the needs of young offenders and victims. Given the question of the effectiveness of the current court system, and the need for approaches which address multiple needs on an individual and broader community level, CJs and community courts could present a viable alternative. Whilst purpose built centres such as North Liverpool are costly and perhaps an unrealistic ideal model, using the principles of the community court within the framework of existing magistrates', or combined courts can offer a useful forum for certain types of offending, particularly to fit with the approaches and policies of other agencies and sectors who work with young people. There are challenges to the work of CJs and community courts, when we consider aspects of bonding and bridging social capital which can exclude ex-offenders in the community, or where services to help them are simply unavailable. CJs and community courts address young offending in a supportive environment, within a legal framework to ensure compliance, using problem solving and restorative approaches which the wider community may better respond to and even participate in, as is found in the Red Hook CJC. Desistance is not simply about requiring an individual to cease offending, it needs understanding of their capacity to change and also knowing that the community in which they live will have the resources and networks, or social capital to enable and allow change. CJs and community courts do have limitations, but they offer potential as a resource to divert young people from the more formal processes of the YJS and custodial sentences, and they acknowledge the importance of the values of youth work to support young people, listen to them and consider different ways of 'doing justice'.

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